

Award No. 10830
Docket No. MW-9945

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement, when

(a) On December 13 and 14, 1955 it assigned or otherwise permitted Mechanical Department employes to perform Masonry work in the Wheel Shop at Readville, Mass.

(b) On January 4, 1956 it assigned or otherwise permitted Mechanical Department forces to install a new temporary support under and to the Pipe Bridge Trestle between the Paint Shop and the Store House at Readville, Mass.

(c) On January 17, 18, and 19, 1956 it assigned or otherwise permitted Mechanical Department forces to remove, relocate and reinstall storage racks in the Lumber Shed at Readville Shops.

(d) On January 14, 16, 17 and 18, 1956 it assigned or otherwise permitted Mechanical Department forces to repair the doors at the West end of the Locomotive Shop at Readville, Mass.

2.

(a) Mason Foreman S. Giusti, Masons S. J. Sujko, A. Molinario, M. DiGuilio, R. Papsadore, Mason Helpers C. DiChiara and J. Finnell each be allowed sixteen (16) hours' pay at his respective straight time rate account of the violation referred to in Part 1 (a) of this claim.

(b) B. & B. Foreman J. Muirhead, B. & B. Carpenters George B. Otis, Clifford Stark, James Costello, and Maintenance Helper Thomas Kingston each be allowed eight (8) hours' pay at his respective straight time rate account of the violation referred to in part 1 (b) of this claim.

(c) B. & B. Foreman J. Muirhead, B. & B. Carpenters George Otis, Charles Viscardy, James Costello, and Maintenance Helper Thomas Kingston each be allowed twenty-four (24) hours' pay at his respective straight time rate account of the violations referred to in part 1 (c) of this claim.

(d) B. & B. Foreman John Muirhead, B. & B. Carpenters George B. Otis, Clifford Stark, Charles Allen, and Maintenance Helper Thomas Kingston each be allowed eight (8) hours' time and one-half pay (Saturday, January 14, 1956) and twenty-four (24) hours' straight time pay at his respective rate because of the violation referred to in part 1 (d) of this claim.

EMPLOYES' STATEMENT OF FACTS:

The situations involved in each section of this claim are as set forth in the following quoted letters:

CLAIM — 1(a) and 2(a) —

"January 16th, 1956

To President, Dick Lawler
Lodge No. 100
Subject: Time Claim

"The Mason gang, consisting of four Masons and two Helpers, also a Mason foreman were sent to the Readville wheel shop for the purpose of breaking up concrete, excavating and removing fill, pouring concrete footing, also cement finishing same for three machines that were to be transferred and reset. This work was completed by our forces in a satisfactory manner.

We were then to return to break up concrete, excavate, for the purpose of letting the electricians set up the new underground wiring for the three machines. Also fill in the old pits, repair the floor and cement grout the newly set up machines. But instead this work which belonged to us was done and completed by the forces under John Carroll, Chief Eng. at the Readville shop-power plant. This work was done on Dec. 13th and 14th. Therefore, we are justified in submitting a time claim payable in full for two days work, the exact time it took the other forces to complete our work.

Sincerely yours,

/s/ Silvio Giusti, Foreman
Stanley J. Sujko—Mason
Anthony Molinario—Mason
Michael DiGuilio—Mason
Ralph J. Papsadore—Mason
Christopher DiChiaria—Helper
J. Finnell—Helper"

"Carmen's work shall consist of building, maintenance, dismantling (except all-wood freight and passenger train cars), painting, upholstering and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops and yards, except work generally recognized as bridge and building department work; . . ."

It is our contention that the work involved in this claim is not in the category of "work generally recognized as bridge and building department work," since it is "maintenance" work within the confines of Readville Shops and has always been performed by the "maintenance force" specifically and regularly assigned for that purpose. The organization making the claim is endeavoring, through the medium of an Award from this Board, to obtain work which they have repeatedly conceded in the past does not belong to them.

In view of the testimony presented herein, we request that they not be permitted to accomplish this effect, and that the claim be denied in its entirety.

All of the facts and arguments used in this case have been affirmatively presented to Employees' representatives.

OPINION OF THE BOARD: The Record shows that both the Railway Employers' Department, AFL-CIO, and System Federation No. 17 were duly notified of the pendency of this dispute and that they respectively declined the opportunity to participate herein. We are of the opinion that a jurisdictional dispute is not before this Division for adjudication.

Before turning to the merits, we shall consider a procedural point raised by the Organization, namely, that Carrier filed its ex parte submission too late for consideration by the Board. It is true that Carrier did not file its submission within the prescribed 30 days, nor did this Division formally authorize an extension of time; however, the Division did accept (receive, file, and process) said submission and in effect authorized such extension. Jurisdiction vested when the Organization instituted proceedings; and after jurisdiction attached, it was within the sound discretion of the Board to extend time limits. We concur in Award 7813 (Larkin) and specifically affirm the following statement in said Award:

" . . . If an extension is allowed, for whatever reason, it is not an issue for a referee. These are matters which the Board should establish and administer through the Executive Secretary, without a referee . . ."

The Record reveals that Claims 1 (a) and 2 (a) were withdrawn by the Organization, by virtue of an amicable settlement reached by the parties on the property, after this Claim was filed; and they are not now before us for decision.

Turning to the merits, we find that this Division has recently decided a similar dispute involving the same parties and their Agreement. See Award 10358 (Schedler). That Claim was resolved in favor of the Organization. It is not contended that this Award is not in point. The argument made in behalf of Carrier is that the Award is in error.

While not bound to the doctrine of stare decisis, the Board has often recognized the need for consistency in its decisions; and it is generally agreed

that a current precedential Award on the same property should not be regarded lightly.

We do not believe that Award 10358 is palpably erroneous and therefore decline to take action herein which would overrule and reverse that decision.

Therefore, except as hereinafter indicated, the Claim is sustained.

As to Claimants, Muirhead, Otis, and Kingston, we note that there is a duplication of time claimed for them on the dates January 17 and 18, 1956. They should each be paid for sixteen hours (and no more) for these dates—at their respective straight time rates.

As to Claims 1 (b) and 2 (b), the Record shows that Carrier specifically affirmed (and the Employees did not deny) that only six man hours of work were involved. The six man hours should be divided equally between the five employees named in 2 (b) and these Claimants paid in accordance with their respective rates of straight time pay.

As to Claims 1 (d) and 2 (d), Carrier specifically affirmed that heavy doors (of the type involved herein) were always constructed in the "mill" at Readville Shops, wherever the need for same arose on the property. This specific allegation was not denied by the Organization, although it had ample opportunity to deny same.

Claims 1 (d) and 2 (d) are resolved and adjusted as follows: They are remanded to the property in order that the parties may compute the number of man hours involved in connection with the carpentry work required in the taking down and rehanging of said doors; the total number of such man hours shall be divided equally between the Claimants involved (except Employees Muirhead, Otis, and Kingston in regard to work done on the dates January 17 and 18, 1956, whose respective claims in regard to these dates are disposed of as above shown); and they shall be paid in accordance with their respective rates of straight time pay.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated to the extent above shown.

AWARD

Claim sustained in part, denied in part, and adjusted as above shown and indicated.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of October 1962.